

Memorandum

Date: August 27, 2009

To: Mr. Paul Clanon
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

From: Department of Water Resources

Subject: **Notice of Changes to CalPeak Power Contracts**

Consistent with Water Code Section 80110(c), the California Energy Resources Scheduling ("CERS") division of the Department of Water Resources ("CDWR"), with respect to its responsibilities pursuant to Water Code Section 80000, et seq., regarding the Department of Water Resources Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System, transmits the attached changes for concurrence by the Executive Director of the California Public Utilities Commission ("Commission") that the contract changes are not material as defined under AB 3058. (See Water Code, § 80110(c)(5)(B).) Attachment A, the MRTU Protocol Agreements ("Protocols"), attached pursuant to the August 27, 2009 Confidentiality Agreement, will supplement the Second Amended and Restated Master Power Purchase and Sale Agreements between CDWR and CalPeak Power ("PPAs") executed on September 1, 2007. Attachment B, attached pursuant to the August 27, 2009 Confidentiality Agreement, provides an analysis of estimated ratepayer benefits and costs as a result of the Protocols. Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the PPAs.

There are five CalPeak Power PPAs: Border, El Cajon, Enterprise, Panoche, and Vaca Dixon, collectively "CalPeak". The PPAs provide for dispatchable power from each facility and expire between December 2011 and January 1, 2012. Border, El Cajon and Enterprise are allocated to San Diego Gas & Electric Co. ("SDG&E") and Panoche and Vaca Dixon are allocated to Pacific Gas and Electric Co. ("PG&E"). PG&E and SDG&E are collectively referred to herein as the "IOUs".

The Protocols address (1) issues arising under the California Independent System Operator's Market Redesign and Technology Upgrade (MRTU) which are exempt from AB 3058 and (2) operational disputes affecting the PPAs.

First, the Protocols conform the PPAs to MRTU by clarifying (i) delivery points, (ii) bidding according to IOU direction, (iii) day ahead and real time market dispatch procedures, (iv) trading of the load uplift obligation, (v) settlement validation data, (vi) CAISO definitions, and (vii) filing of resource adequacy ("RA") supply plans with CAISO. These MRTU changes are exempt from AB 3058.

Second, the Protocols resolve two ongoing disputes:

(1) The first dispute relates to Dedicated Hours. In order to settle the Dedicated Hours dispute and ensure reliable delivery of power to California during critical peak periods, CDWR agrees to forgo a Capacity Payment reduction under the PPAs and CalPeak agrees to forgo CAISO Reliability Must Run payments from ratepayers during 2010 and 2011. In order for the CAISO to incorporate the RMR impacts of this Protocol, the CAISO has requested the executed Protocol be provided by September 18, 2009.

(2) The second dispute relates to turbine bolt failures which CalPeak claims constitute an Uncontrollable Force under the PPAs. The Protocols resolve this dispute by granting CalPeak a one-time allowance of additional scheduled maintenance outage days per facility specifically for repair of the turbine bolts.

Pursuant to Water Code Section 80110(c)(4), CDWR has determined that the modifications addressing issues related to MRTU are exempt from CPUC concurrence.

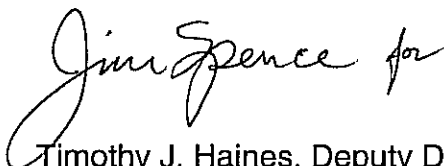
Additionally, Water Code Section 80110(c)(5)(B) states:

"A change to a contract *is not material* if it is only administrative in nature or the change in ratepayer value results in ratepayer savings, not to exceed twenty-five million dollars (\$25,000,000) per year." This section provides that "the executive director of the commission shall concur in writing with each of those determinations by the department." (Emphasis added.)

CDWR has determined that, for purposes of Water Code Section 80110(c)(5)(B), these contract changes are not material because they are settlement of contract interpretation disputes. In addition, CDWR's analysis shows that these changes to the CalPeak PPAs yield a net statewide ratepayer benefit less than \$25,000,000 per year.

CDWR hereby transmits its determination. Please provide your written concurrence by September 18, 2009, that the attached changes to the PPAs are not material for purposes of Water Code Section 80110(c)(5)(B).

If you have any questions or need any additional information, please contact me at (916) 574-2733.

A handwritten signature in cursive script, reading "Tim Haines for".

Timothy J. Haines, Deputy Director
California Energy Resource Scheduling
Department of Water Resources

Attachments